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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 425

SEABOARD AIR LINE RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, FLORIDA EAST COAST RAILWAY COMPANY, ET AL.

No. 555

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FLORIDA EAST COAST RAILWAY COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

MEMORANDUM FOR THE UNITED STATES

STATEMENT

Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Company are two of the three major railroads in the southeastern United States (the third being Southern Railway Company).

789-821—65

Atlantic and Seaboard serve many common points and areas, and about one-third of their combined traffic is competitive between them. In central and west Florida, they are the only rail carriers. They are prosperous railroads, although like most other members of the railroad industry their share of total traffic in the regions they serve has declined over the years with the rise of competing modes of transportation. Traffic and revenues from the carriage of their principal bulk commodities have, however, been increasing steadily.

On July 22, 1960, Atlantic and Seaboard filed with the Commission an application for authorization to merge. Lengthy administrative proceedings followed. The applicants introduced evidence to show that the merger would result in savings in operating expenses through the elimination of duplicate trackage and switching, terminal, and headquarter facilities, and would also lead to better and faster service. Opposition to the merger centered on the alleged adverse competitive effects that would flow from it. The Department of Justice pointed out that the merger would create a rail monopoly in the rapidly growing central and west Florida regions, and that the elimination of one of only three major rail lines in the Southeast as a whole would likely dampen the vigor of rail competition—particularly in service—in that region.

The Commission approved the proposed merger. It recognized that the merger would eliminate competition between Atlantic and Seaboard and would create a rail monopoly in parts of Florida. But it found

that there would remain ample competitive rail service in the Southeast as a whole and that the traffic on the merged lines would only be a small part of the total movement of traffic in the Southeast by all forms of transportation. The Commission pointed to a number of factors which, in its view, tended to lessen the anticompetitive effects of the merger. These factors included the pressure of vigorous intermodal competition, certain conditions imposed by the Commission on the merging lines requiring them to open some of their facilities to competing lines, and the degree to which the railroad industry is government regulated. The Commission concluded that the reduction of rail competition caused by the merger would not be substantial, that any adverse competitive effects were outweighed by the savings in operating expenses and improvements in service which the merger could be expected to produce, and that therefore the merger would be consistent with the public interest.

The three-judge district court set aside the Commission's order and returned the case to the Commission for further proceedings. It held that the Commission's analysis of the competitive effects of the merger was fatally deficient because the Commission had failed "to decide whether or not section 7 of the Clayton Act would be violated by the proposed merger" (J.S. App. I, p. 9) or to make the necessary preliminary findings required in a Section 7 case regarding the relevant product and geographic markets and submarkets. In disposing of the case on the ground of the Commission's failure to make a Section 7 analysis and